

440622

DECISION



R. Ressler
Comptroller

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-190533

DATE: December 2, 1977

MATTER OF: Francis Carr - U.S. Magistrate - Administrative
Leave after Approval of Disability Retirement

DIGEST: United States Magistrate who did not earn annual or sick leave was separated upon approval of disability retirement on November 9, 1976. He seeks compensation from that date to end of 1976 calendar year, contending he should have been granted administrative leave with pay during that period. Claim must be denied because once employee's separation is effected, date may not be changed to restore him to rolls, except in situations not here applicable, and there is no authority to grant administrative leave with pay for extended period here involved.

By letter dated October 20, 1977, Congressman Leon E. Panetta, requests our decision as to whether retired United States Magistrate Francis Carr of the United States District Court for the Northern District of California may be restored retroactively to the rolls, effective as of November 9, 1976, the date he was separated for disability retirement, and whether he may be granted administrative leave with pay from that date to the end of the calendar year, December 31, 1976. A request for such action was denied by the Administrative Office of the United States Courts and an appeal was made to the Civil Service Commission. The Commission's General Counsel recommended that the matter be referred to this Office.

Magistrate Carr was removed from the rolls immediately upon receipt of the Commission's approval of his disability retirement. It is his view that he should have been retained on the rolls until the end of the calendar year, a period of nearly 2 months, in some kind of leave with pay status. The Administrative Office states that magistrates do not earn annual or sick leave under the provisions of subchapter I of Chapter 63, title 5, United States Code. The General Counsel of the Commission states that the Commission has no jurisdiction in the matter.


We can find no authority for granting the magistrate's request. It has long been the established rule that once an employee's separation is an accomplished fact, the date of separation may not

B-190533

be changed for the purpose of restoring the employee to the rolls. The only exceptions which have been made to this rule were situations where the separation did not conform to the intention of the parties because of a bona fide mistake as to eligibility for an annuity or for a related supplemental benefit such as the continuation of life or health insurance after retirement. B-187596, December 15, 1976. The record before us in this case contains no evidence of such a mistake.

Moreover, we are unaware of an existing statutory provision which could be reasonably construed to authorize the expenditure of appropriated funds to pay the salary of an employee in a non-duty status for the extended period of time here involved, approximately 35 work days. While we recognize that agencies may grant administrative leave, this authority has been limited to relatively brief periods of time and for relatively limited purposes. See 53 Comp. Gen. 1054 (1974), wherein it was held that there is no legal authority to implement an arbitrator's award granting 30 days administrative leave to an injured employee. In that case the employee was unable to perform his regular duties but was able and willing to perform other duties had they been assigned to him. See also B-189439, August 8, 1977, 56 Comp. Gen. ____; and B-189773, November 3, 1977.

In view of the foregoing, it is our opinion that Magistrate Carr may not be retroactively restored to the rolls as of November 9, 1976, and may not be granted administrative leave with pay from that date to the end of the 1976 calendar year.


Deputy Comptroller General
of the United States